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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *[Signature]*

FROM: Lynn Vouis, Assistant County Attorney *[Signature]*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
Kathleen Myer, Principal Engineer/Major Projects *[Signature]*

DATE: December 13, 2004

SUBJECT: Purchase Agreement Authorization
Owner: Cassel Creek Property Owners' Association, Inc.
Parcel I.D. No.: 21-21-30-514-0C00-0000
Kewannee Trail; Recreational Trail Easement

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel I.D. No. 21-21-30-514-0C00-0000. The parcel is to be used for recreational trail purposes for the Kewannee Trail project. The purchase price is \$20,000.00, inclusive of any attorney fees and expert costs incurred by the property owner.

I THE PROPERTY

A. Location Data

The property is located on northeast corner of Cassel Creek Boulevard and Derbyshire Circle, 600 feet west of State Road 436 in Casselberry.

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

B. Address

1900 Cassel Creek Boulevard
Casselberry, Florida 32707-5639

C. Description

The parent tract property contains 294,747 square feet (6.766 acres), and is improved with the Cassel Creek Condominium complex.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2004-R-101 on May 25, 2004, authorizing the acquisition of the referenced property, and finding that the Kewanee Trail project is necessary and serve a county and public purpose and is in the best interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The parent tract contains a total of 6.766 acres. The proposed recreation easement contains 27,007± square feet. It traverses the entire length of the north property line of the parent tract, or about 450 linear feet.

IV APPRAISED VALUE

The County's appraised value amount as of April 1, 2004 was \$11,600.00. The County's appraisal was prepared by Diversified Property Specialists, Inc., and was approved by the County's MAI designated staff appraiser.

V BINDING OFFER/NEGOTIATIONS

On September 14, 2004, the BCC authorized a binding written offer in the amount of \$14,000.00 which was forwarded to the property owner. Thereafter, County staff negotiated this contingent settlement agreement with the property owner in the amount of \$20,000.00, with no fees or costs incurred.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

The acquisition of common area property from a condominium association raises particular difficulties under Florida law. The County is required to notify each individual condominium association member, who in effect owns an undivided share of the common area. If any member objects, the case must proceed to litigation. In this case, Cassel Creek is a small condominium association with only twenty units. A meeting was held by the Association to decide whether to sell an easement interest to the County and at what price. All twenty condominium units were represented at this meeting, and decided they were willing to settle with the County if they were compensated in the amount of \$20,000.00. Although this is \$6,000.00 more than the binding written offer amount, and \$8,400.00 more than the appraised value, the proposed settlement is reasonable under the circumstances. The costs of litigation, updated appraisals, and service on multiple property owners would easily exceed the

\$6,000.00 difference between the binding written offer and the proposed settlement amount.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$20,000.00, with any attorney's fees and expenses included.

LV/kc

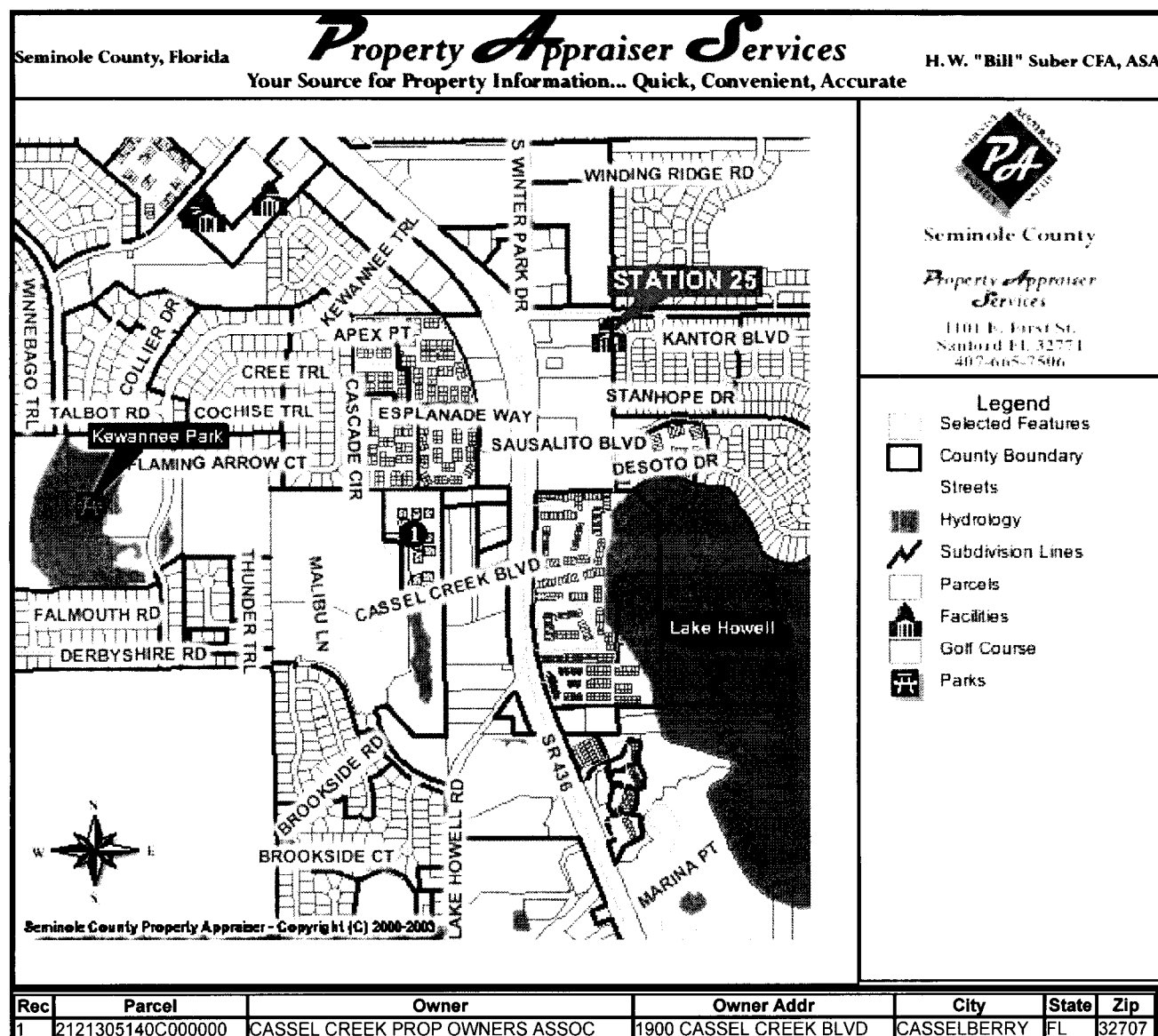
Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

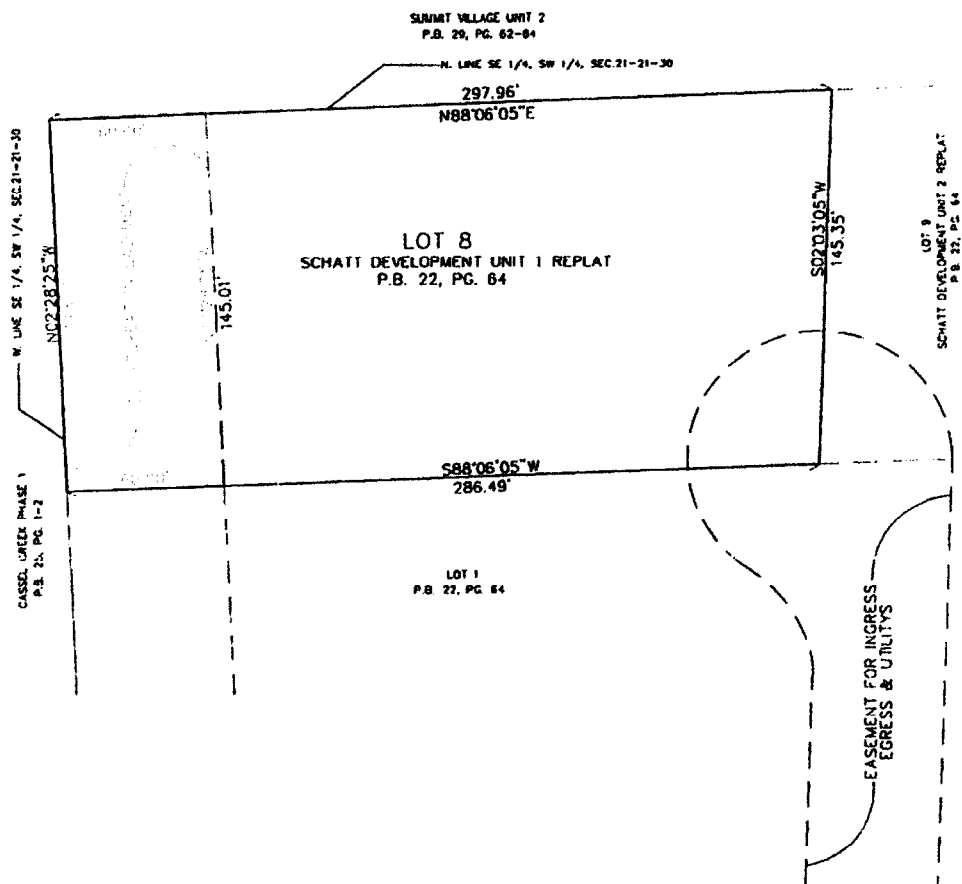
Purchase Agreement (Exhibit C)

P:\USERS\ILOUIS\SETTLEMENT MEMO\SIKEWANNEE TRAIL\AGENDA ITEM CASSEL CREEK PROP OWNERS' ASSOC.DOC

**EXHIBIT A**

**PARCEL 2130-21-512-0000-0080 (Western Parcel)
PROPERTY SKETCH SHOWING TAKING**

SKETCH OF DESCRIPTION



SHEET 1 OF 2

EXHIBIT B

**PURCHASE AGREEMENT
RECREATIONAL TRAIL EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this _____ day of _____, 2005, by and between CASSEL CREEK PROPERTY OWNERS' ASSOCIATION, INC., whose address is 2599 Derbyshire Circle, Casselberry, FL 32707-5650, hereinafter referred to as "OWNER," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for a road project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, OWNER hereby agrees to sell and COUNTY hereby agrees to buy the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION

See, attached Exhibit A

Parcel I. D. Number: 21-21-30-514-0C00-0000

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above described property of the above referenced project by Permanent Recreational Trail Easement, free of liens and encumbrances, unto COUNTY for the sum of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever.

(b) COUNTY shall be responsible for the following closing costs: recording fees for Recreational Trail Easement and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNER shall be responsible for OWNER's own attorney's fees, cost to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing

costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

III. CONDITIONS

(a) COUNTY shall pay to the OWNER the sum as described in Item II., above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur.

(b) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing of this Agreement. COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(c) Any and all encroachments existing upon the property, other than those improvements included in the purchase price, are to be removed by the OWNER at the expense of the OWNER prior to closing.

(d) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(e) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a Recreational Trail Easement, also include the covenant of further assurances.

(f) The OWNER shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(g) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(h) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(i) As part of the consideration for this Purchase Agreement, OWNER hereby grants to COUNTY, its employees, agents, consulting engineers, contractors and other representatives the right to enter upon and to have exclusive possession of the property described in Exhibit A to this Agreement. The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Kewannee Trail project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNER will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter and possess the property before conveyance of title.

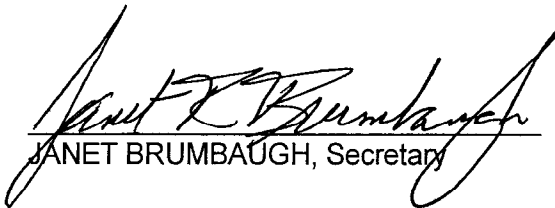
(j) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement. §375.251, *Florida Statutes*, shall apply to OWNER as a further limitation on any liability on the part of OWNER.

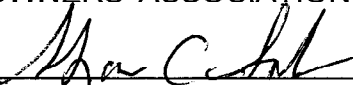
(k) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:

PROPERTY OWNER:


JANET BRUMBAUGH, Secretary

CASSEL CREEK PROPERTY
OWNERS' ASSOCIATION, INC
By: 
SHARON SACKS, President
2599 Derbyshire Circle
Casselberry, Florida 32707-5650



Date: 12/5/04

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON D. HENLEY, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency:

As authorized for execution by the Board of
County Commissioners at its _____,
2005, regular meeting.



County Attorney

LV/kc
11/30/04

SKETCH OF DESCRIPTION

SUMMIT VILLAGE UNIT 1
P.B. 28, PG. 63

SUMMIT VILLAGE UNIT 2
P.B. 29, PG. 62

N. LINE SW 1/4, SW 1/4,
SEC. 21-21-30

NE. COR. SW 1/4, SW 1/4,
SEC. 21-21-30

N89°11'20"W
450.00'

N89°11'20"W
450.54'

60' RECREATIONAL TRAIL EASEMENT

130' DRAINAGE EASEMENT

CASSEL CREEK PHASE 1
P.B. 25, PG. 1-2

E. LINE OF THE SW 1/4 OF THE SW 1/4, SEC. 21-21-30

SCHATT DEVELOPMENT UNIT ONE
P.B. 19, PG. 57-58

NEWPORT COLONY APARTMENTS
P.B. 43, PG. 45-47

S89°11'20"E
78.38'

R=55.00'
L=88.88'
Δ=90°28'58"

DEBYSHIRE CIRCLE
(50' R/W)

60' DRAINAGE EASEMENT

743.10'

S00°17'35"W

CASSEL CREEK BLVD
(106' R/W)

N88°42'22"W
169.07'

S74°04'18"W
163.00'

EXHIBIT A

NOT PLATTED

SHEET 1 OF 2

EMINOLE COUNTY

ENGINEERING DEPARTMENT
SURVEY SECTION
520 W. LAKE MARY BLVD.
SANFORD, FLORIDA 32773
(407)665-5647

NOT VALID WITHOUT THE SIGNATURE AND THE
ORIGINAL RAISED SEAL OF A FLORIDA LICENSED
SURVEYOR AND MAPPER.

Gary A. Leise

GARY A. LEISE P.L.S. FLA. CERT.# 4723

LEGEND

- | | |
|--------------------------------|----------------------------------|
| Δ - CENTRAL ANGLE (DELTA) | PB - PLAT BOOK |
| R - RADIUS | PG - PAGE (S) |
| CB - CHORD BEARING | ORB - OFFICIAL RECORDS BOOK |
| L - ARC LENGTH | SEC - SECTION - TOWNSHIP - RANGE |
| C - CHORD | PCL - PARCEL |
| ○ - SET IRON PIN OR PIPE | PO - POINT OF CURVATURE |
| ● - FOUND IRON PIN OR PIPE | PT - POINT OF TANGENCY |
| □ - SET CONCRETE MONUMENT | PI - POINT OF INTERSECTION |
| ■ - FOUND CONCRETE MONUMENT | PCC - POINT OF COMPOUND CURVE |
| P.O.B. - POINT OF BEGINNING | PRC - POINT OF REVERSE CURVE |
| P.O.C. - POINT OF COMMENCEMENT | M - MEASURED |
| P.O.T. - POINT OF TERMINATION | P - PLAT |
| R/W - RIGHT OF WAY | F - FIELD |
| D - DEED | C - CALCULATED |
| C/L - CENTERLINE | P/L - PROPERTY LINE |
| UTIL - UTILITY | ESMT - EASEMENT |

FIELD DATE: N/A	SCALE: 1"=100'
DATE: 03-08-02	DRAWN BY: L.W.
JOB NAME: 02-007	CHECKED BY:

LEGAL DESCRIPTION

RECREATIONAL TRAIL EASEMENT

THE NORTH 60.00 FEET OF THE FOLLOWING DESCRIBED PARCEL:

"BEGIN AT THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 30 EAST; THENCE RUN S00°17'38"W A DISTANCE OF 803.10 FEET ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 21; THENCE RUN S74°04'18"W A DISTANCE OF 165.00 FEET; THENCE RUN N88°42'22"W A DISTANCE OF 169.07 FEET; THENCE RUN N01°17'38"E A DISTANCE OF 403.71 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 55.00 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°28'58" A DISTANCE OF 86.86 FEET; THENCE RUN N89°11'20"W A DISTANCE OF 78.58 FEET; THENCE RUN N00°48'40"E A DISTANCE OF 380.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 21; THENCE RUN S89°11'20"E A DISTANCE OF 450.00 FEET TO THE POINT OF BEGINNING." AS RECORDED IN PLAT BOOK 25, PAGE 1-2, OF THE PUBLIC RECORDS, SEMINOLE COUNTY, FLORIDA.

CONTAINING 0.62 ACRES MORE OR LESS.

27,000 sq ft
OK

SHEET 2 OF 2

SEMINOLE COUNTY
ENGINEERING DEPARTMENT
SURVEY SECTION
520 W. LAKE MARY BLVD.
SANFORD, FLORIDA 32773
(407)665-5647

LEGEND

BEARINGS BASED ON : N. LINE CASSEL CREEK UNIT ONE

AS BEING S89°11'20"E

SURVEYOR'S NOTES

1. THIS IS NOT A SURVEY.
2. UNDERGROUND UTILITIES AND/OR IMPROVEMENTS NOT LOCATED.
3. SURVEYOR HAS NOT ABSTRACTED THE LAND SHOWN HEREON, THE ABOVE REFERENCED PROPERTY MAY BE SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

FIELD DATE: N/A
DATE: 03-05-02
JOB NAME: 02-007

SCALE: 1"=100'
DRAWN BY: L.W.
CHECKED BY:

REVISIONS

DATE	DESCRIPTION	BY
02-03-03	30' ESMT. TO 60' ESMT.	L.W.